

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Orlando Garcia,

Plaintiff,

v.

KHP III SF Sutter LLC, a
Delaware Limited Liability
Company;

**Kimpton Hotel & Restaurant
Group, LLC,** a Delaware Limited
Liability Company;

Defendants

Case No.

**Complaint For Damages And
Injunctive Relief For
Violations Of:** Americans With
Disabilities Act; Unruh Civil
Rights Act

Plaintiff Orlando Garcia complains of KHP III SF Sutter LLC, a Delaware Limited Liability Company; Kimpton Hotel & Restaurant Group, LLC, a Delaware Limited Liability Company; (“Defendants”), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from cerebral palsy. He has the use of only one arm. He uses a wheelchair, walker, or cane for mobility.

2. Defendant KHP III SF Sutter LLC, a Delaware Limited Liability Company, owns the Kimpton Buchanan Hotel located at 1800 Sutter St., San Francisco, California, currently and at all times relevant to this complaint. Defendant Kimpton Hotel & Restaurant Group, LLC, a Delaware Limited Liability Company, operates the hotel currently and at all times relevant to this complaint.

3. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of other Defendants are ascertained.

JURISDICTION:

4. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

5. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

1 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.
4

5 **PRELIMINARY STATEMENT**

6 7. This is a lawsuit challenging the reservation policies and practices of a
7 place of lodging. Plaintiff does not know if any physical or architectural
8 barriers exist at the hotel and, therefore, is not claiming that that the hotel has
9 violated any construction-related accessibility standard. Instead, this is about
10 the lack of information provided on the hotel's reservation website that would
11 permit plaintiff to determine if there are rooms that would work for him.

12 8. After decades of research and findings, Congress found that there was
13 a "serious and pervasive social problem" in America: the "discriminatory
14 effects" of communication barriers to persons with disability. The data was
15 clear and embarrassing. Persons with disabilities were unable to "fully
16 participate in all aspects of society," occupying "an inferior status in our
17 society," often for no other reason than businesses, including hotels and
18 motels, failed to provide information to disabled travelers. Thus, Congress
19 decided "to invoke the sweep of congressional authority" and issue a "national
20 mandate for the elimination of discrimination against individuals with
21 disabilities," and to finally ensure that persons with disabilities have "equality
22 of opportunity, full participation, independent living" and self-sufficiency.

23 9. As part of that effort, Congress passed detailed and comprehensive
24 regulations about the design of hotels and motels. But, as importantly,
25 Congress recognized that the physical accessibility of a hotel or motel means
26 little if the 61 million adults living in America with disabilities are unable to
27 determine which hotels/motels are accessible and to reserve them. Thus,
28 there is a legal mandate to provide a certain level of information to disabled

1 travelers.

2 10. But despite the rules and regulations regarding reservation procedures,
3 a 2019 industry article noted that: “the hospitality sector has largely
4 overlooked the importance of promoting accessible features to travelers.”

5 11. These issues are of paramount important. Persons with severe
6 disabilities have modified their own residences to accommodate their unique
7 needs and to ameliorate their physical limitations. But persons with disabilities
8 are never more vulnerable than when leaving their own residences and having
9 to travel and stay at unknown places of lodging. They must be able to ascertain
10 whether those places work for them.

11
12 **FACTUAL ALLEGATIONS:**

13 12. Plaintiff planned on making a trip in August of 2021 to the San
14 Francisco, California, area.

15 13. He chose the Kimpton Buchanan Hotel located at 1800 Sutter St., San
16 Francisco, California because this hotel was at a desirable price and location.

17 14. Due to Plaintiff’s condition, he is unable to, or seriously challenged in
18 his ability to, stand, ambulate, reach objects mounted at heights above his
19 shoulders, transfer from his chair to other equipment, and maneuver around
20 fixed objects.

21 15. Thus, Plaintiff needs an accessible guestroom and he needs to be given
22 information about accessible features in hotel rooms so that he can confidently
23 book those rooms and travel independently and safely.

24 16. On January 31, 2021, while sitting bodily in California, Plaintiff went to
25 the Kimpton Buchanan Hotel reservation website at
26 <https://www.thebuchananhotel.com/> seeking to book an accessible room at
27 the location.

28 17. This website reservation system is owned and operated by the

1 Defendants and permits guests to book rooms at Kimpton Buchanan Hotel.

2 18. Plaintiff found that there was insufficient information about the
3 accessible features in the “accessible rooms” at the Hotel to permit him to
4 assess independently whether a given hotel room would work for him.

5 19. For example, Plaintiff cannot transfer from his wheelchair to a toilet
6 unless there are grab bars at the toilet to facilitate that transfer. But the Hotel
7 reservation website does not provide any information about the existence of
8 grab bars for the accessible guestroom toilets. This is critical information for
9 the plaintiff.

10 20. As another example, Plaintiff has had tremendous difficulty with using
11 lavatory sinks in the past because sinks were cabinet style sinks or had low
12 hanging aprons that did not provide knee clearance for a wheelchair user to
13 pull up and under or, alternatively, where the plumbing underneath the sink
14 was not wrapped with insulation to protect against burning contact to his
15 knees. Here, the Hotel reservation website provides no information about the
16 accessibility of the sinks in the accessible guestroom.

17 21. As another example, Plaintiff needs doorways that are at least 32 inches
18 wide so he can get his wheelchair through. Without this feature, Plaintiff risks
19 getting stuck in a doorway, or being prevented from passing through the
20 doorway at all. The website does not mention that the hotel room has this
21 feature.

22 22. Plaintiff does not need an exhaustive list of accessibility features.
23 Plaintiff does not need an accessibility survey to determine if a room works for
24 him. Plaintiff, like the vast majority of wheelchair users, simply needs a
25 handful of features to be identified and described with a modest level of detail:

- 26 • For the doors, Plaintiff simply needs to know if he can get into the hotel
27 room and into the bathroom. This is a problem that has created
28 tremendous problems for the Plaintiff in the past. A simple statement

1 that the hotel room entrance and interior doors provide at least 32
2 inches of clearance is enough to provide Plaintiff this critical piece of
3 information about whether he can fit his wheelchair into the hotel
4 rooms.

- 5 • For the beds themselves, the only thing Plaintiff needs to know (and the
6 only thing regulated by the ADA Standards) is whether he can actually
7 get to (and into) the bed, i.e., that there is at least 30 inches width on the
8 side of the bed so his wheelchair can get up next to the bed for transfer.
9 This is critical information because Plaintiff cannot walk and needs to
10 pull his wheelchair alongside the bed.
- 11 • For the desk where Plaintiff will eat and work, Plaintiff simply needs to
12 know that it has sufficient knee and toe clearance so that he can use it.
13 A simple statement like “the desk provides knee and toe clearance that
14 is at least 27 inches high, 30 inches wide, and runs at least 17 inches
15 deep” is more than sufficient. Because Plaintiff is confined to a
16 wheelchair, he needs to know this information to determine if the desk
17 is accessible to and useable by him.
- 18 • For the restroom toilet, Plaintiff only needs to know two things that
19 determine if he can transfer to and use the toilet; (1) that the toilet seat
20 height is between 17-19 inches (as required by the ADA Standards) and
21 (2) that it has the two required grab bars to facilitate transfer.
- 22 • For the restroom sink, the Plaintiff two things that will determine
23 whether he can use the sink from his wheelchair: (1) can he safely get his
24 knees under the toilet? To wit: does the sink provide the knee clearance
25 (27 inches high, 30 inches wide, 17 inches deep) and is any plumbing
26 under the sink wrapped with insulation to protect against burning
27 contact? The second thing is whether the lavatory mirror is mounted at
28 a lowered height so that wheelchair users can see it. A simple statement

1 like: “the lavatory sink provides knee clearance of at least 30 inches
2 wide, 27 inches tall and 17 inches deep, all of the under-sink plumbing
3 is wrapped, and the lowest reflective edge of the mirror is no more than
4 40 inches high” would suffice.

- 5 • Finally, for the shower, Plaintiff needs to know only a handful of things:
6 (1) what type of shower it is (transfer, standard roll-in, or alternate roll-
7 in), (2) whether it has an in-shower seat; (3) that there are grab bars
8 mounted on the walls; (4) that there is a detachable hand-held shower
9 wand for washing himself and (5) that the wall mounted accessories and
10 equipment are all within 48 inches height.

11 23. This small list of items are the bare necessities that Plaintiff must know
12 to make an independent assessment of whether the “accessible” hotel room
13 works for him. These things comprise the basics of what information is
14 reasonably necessary for Plaintiff (or any wheelchair user) to assess
15 independently whether a given hotel or guest room meets his or her
16 accessibility needs.

17 24. Other accessibility requirements such as slopes of surfaces, whether the
18 hand-held shower wand has a non-positive shut off valve, the temperature
19 regulator, the tensile strength and rotational design of grab bars, and so many
20 more minute and technical requirements under the ADA are beyond what is a
21 reasonable level of detail and Plaintiff does not expect or demand that such
22 information is provided.

23 25. But because the Defendants have failed to identify and describe the core
24 accessibility features in enough detail to reasonably permit individuals with
25 disabilities to assess independently whether a given hotel or guest room meets
26 his accessibility needs, the Defendants fail to comply with its ADA obligations
27 and the result is that the Plaintiff is unable to engage in an online booking of
28 the hotel room with any confidence or knowledge about whether the room will

1 actually work for him due to his disability.

2 26. This lack of information created difficulty for the Plaintiff and the idea
3 of trying to book this room -- essentially ignorant about its accessibility --
4 caused difficulty and discomfort for the Plaintiff and deterred him from
5 booking a room at the Hotel

6 27. Plaintiff travels frequently and extensively, not only for non-litigation
7 reasons but also because he is an ADA tester and actively engaged in finding
8 law breaking businesses and hauling them before the courts to be penalized
9 and forced to comply with the law.

10 28. As he has in the past, Plaintiff will continue to travel to San Francisco
11 area on a regular and ongoing basis and will patronize this Hotel once it has
12 been represented to him that the Defendant has changed its policies to comply
13 with the law and to determine if the Hotel is physically accessible as well as
14 complying with required reservation procedures. Plaintiff will, therefore, be
15 discriminated against again, i.e., be denied his lawfully entitled access, unless
16 and until the Defendant is forced to comply with the law.

17 29. Plaintiff has reason and motivation to use the Defendant's Hotel
18 reservation system and to stay at the Defendant's Hotel in the future. Among
19 his reasons and motivations are to assess these policies and facilities for
20 compliance with the ADA and to see his lawsuit through to successful
21 conclusion that will redound to the benefit of himself and all other similarly
22 situated. Thus, Plaintiff routinely revisits and uses the facilities and
23 accommodations of places he has sued to confirm compliance and to enjoy
24 standing to effectuate the relief promised by the ADA.

1 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**

2 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
3 Defendants.) (42 U.S.C. section 12101, et seq.)

4 30. Plaintiff re-pleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 31. Under the ADA, it is an act of discrimination to fail to make reasonable
8 modifications in policies, practices, or procedures when such modifications
9 are necessary to afford goods, services, facilities, privileges advantages or
10 accommodations to person with disabilities unless the entity can demonstrate
11 that taking such steps would fundamentally alter the nature of the those goods,
12 services, facilities, privileges advantages or accommodations. See 42 U.S.C. §
13 12182(B)(2)(A)(ii).

14 32. Specifically, with respect to reservations by places of lodging, a
15 defendant must ensure that its reservation system, including reservations
16 made by “any means,” including by third parties, shall:

- 17 a. Ensure that individuals with disabilities can make
18 reservations for accessible guest rooms during the same
19 hours and in the same manner as individuals who do not
20 need accessible rooms;
- 21 b. Identify and describe accessible features in the hotels and
22 guest rooms offered through its reservations service in
23 enough detail to reasonably permit individuals with
24 disabilities to assess independently whether a given hotel
25 or guest room meets his or her accessibility needs; and
- 26 c. Reserve, upon request, accessible guest rooms or specific
27 types of guest rooms and ensure that the guest rooms
28 requested are blocked and removed from all reservations

1 systems.

2 *See* 28 C.F.R. § 36.302(e).

3 33. Here, the defendant failed to modify its reservation policies and
4 procedures to ensure that it identified and described accessible features in the
5 hotels and guest rooms in enough detail to reasonably permit individuals with
6 disabilities to assess independently whether a given hotel or guest room meets
7 his or her accessibility needs and failed to ensure that individuals with
8 disabilities can make reservations for accessible guest rooms during the same
9 hours and in the same manner as individuals who do not need accessible
10 rooms.

11
12 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
13 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
14 Code § 51-53.)

15 34. Plaintiff repleads and incorporates by reference, as if fully set forth
16 again herein, the allegations contained in all prior paragraphs of this
17 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
18 that persons with disabilities are entitled to full and equal accommodations,
19 advantages, facilities, privileges, or services in all business establishment of
20 every kind whatsoever within the jurisdiction of the State of California. Cal.
21 Civ. Code §51(b).

22 35. The Unruh Act provides that a violation of the ADA is a violation of the
23 Unruh Act. Cal. Civ. Code, § 51(f).

24 36. Defendants’ acts and omissions, as herein alleged, have violated the
25 Unruh Act by, inter alia, failing to comply with the ADA with respect to its
26 reservation policies and practices.

27 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty
28 and discomfort for the plaintiff, the defendants are also each responsible for

1 statutory damages, i.e., a civil penalty. *See* Civ. Code § 52(a).

2
3 **PRAYER:**

4 Wherefore, Plaintiff prays that this Court award damages and provide
5 relief as follows:

6 1. For injunctive relief, compelling Defendants to comply with the
7 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
8 plaintiff is not invoking section 55 of the California Civil Code and is not
9 seeking injunctive relief under the Disabled Persons Act at all.

10 2. Damages under the Unruh Civil Rights Act, which provides for actual
11 damages and a statutory minimum of \$4,000 for each offense.

12 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
13 to 42 U.S.C. § 12205; and Cal. Civ. Code § 52(a).

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15
16 Dated: February 17, 2021

CENTER FOR DISABILITY ACCESS

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By: _____

Russell Handy, Esq.

Attorneys for Plaintiff